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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,191	04/15/1999	WILLIAM MEYER SMITH	AT9-98-355	3200

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EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/292,191

Applicant(s)  
Smith et al.

Examiner  
Stephan Willett

Art Unit  
2141



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 10, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

***Title Change***

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it **must** be submitted no later than the payment of the Issue Fee.
2. Pursuant to MPEP 606.01, the title has been change to read: --AN APPARATUS FOR SCHEDULED SERVICE OF COMPUTER NETWORK REQUESTS BASED ON THE AVAILABILITY OF RESOURCE CAPACITY--.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-3, 10-12, 19-21, 28-31, are rejected under 35 U.S.C. 102(e) as being anticipated by Berstis et al. with Patent Number 6,115,745.

4. Regarding claim(s) 1, 3, 10, 12, 19, 21, 28-29, Berstis teaches determining availability of resources, col. 5, lines 30-40. Berstis teaches allocating a scheduled time, col. 6, lines 17-20. to process a data transfer request, col. 4, lines 54-67 and "a test is made to determine whether updated usage statistics have been received from the central authority" ... or a set of agent start

times .... the agent then selects an agent start time from the new map [preselected time slots]",

col. 5, 6, lines 66-67, 6-8..

5. Regarding claim(s) 2, 11, 20, 30, Berstis teaches selecting and notification of a time slot,

col. 5, lines 40 and 50-52.

6. Regarding claim(s) 31, Berstis teaches Internet use, col. 4, lines 40-41

### ***Claim Rejections - 35 USC § 103***

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-9, 13-18, 22-27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al. with Patent Number 6,115,745 in view of Guarneri et al. with Patent Number 5,631,907.

10. Regarding claim(s) 4, 13, 22, 32, Berstis teaches scheduling network activities. Berstis

teaches determining availability of resources, col. 5, lines 30-40. Berstis teaches allocating a scheduled time to process a data transfer request, col. 6, lines 17-20. Berstis teaches the invention in the above claim(s) except for explicitly teaching breaking up data into subfiles and said data is specifically software. In that Berstis operates to transfer data over a network, the artisan would have looked to the computer network arts for details of implementing various digital signaling processing operations. In that art, Guarneri, a related data distributing network teaches “distributing data to a plurality of destinations”, col. 6, lines 59-60 in order to provide “software or data to be transmitted”, col. 6, lines 67. Guarneri specifically teaches “the data is processed into blocks”, col. 7, lines 3, 59-60 and resending data, col. 9, lines 8-12. Transmitting software data over a network divided into subfiles or blocks is taught. Further, Guarneri suggests “large files .... or executable (object code) files”, col. 12, lines 18-23 may be transmitted. The motivation to incorporate subfiles insures that network performance is increased, especially with large files. Thus, it would have been obvious to one of ordinary skill in the art to incorporate subfiles as taught in Guarneri into the network scheduling system described in the Berstis patent because Berstis operates with transferring data and Guarneri suggests that optimization can be obtained with subfiles. Therefore, by the above rational, the above claim(s) are rejected.

11. Regarding claims 5, 14, 23, Berstis teaches real time services, col. 1, lines 45-48. Thus, the above claim limitations are obvious in view of the combination.

12. Regarding claims 6-7, 15-16, 24-25, Berstis teaches time slot division as multiple tasks, col. 13, lines 53-57, Berstis teaches “a test is run to determine whether the agent is able to obtain one of the limited number of network connections according to some given criteria”, col. 5, lines 47-50, such as “a 5-10 minute period between broadcasts” as taught in Guarneri which inherently

is why the data is broken into pieces to vary sending times as taught in Berstis.. Thus, the above claim limitations are obvious in view of the combination.

13. Regarding claims 8-9, 17-18, 26-27, Berstis teaches slot priority as weights, col. 8, lines 64-66. Thus, the above claim limitations are obvious in view of the combination.

### *Response to Amendment*

14. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected. For example, “software assets” can be read broadly to mean data passed with software and Guarneri clearly teaches “software distribution”.

15. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

16. Applicant suggests “a network client does not service its own request”, Paper No. 4, Page 3, lines 5-6. The references should not be read in a vacuum, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Numerous network requests are taught, col. 4, lines 54-67 that are serviced by servers, ISPs, etc. and the time slots indicate availability of network resources based on the allocated time slots in a map which is obviously done in real time. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

17. Applicant suggests “the teachings relied on do not disclose selecting a notification of a time slot”, Paper No. 4, Page 4, lines 10-11. However, Berstis teaches “a test is made to determine whether updated usage statistics have been received from the central authority ... or a

set of agent start times .... the agent then selects an agent start time from the new map [preselected time slots]”, col. 5, 6, lines 66-67, 6-8. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

18. Applicant suggests “since a connection was unavailable, no requests could have been initiated in the first instance”, Paper No. 4, Page 6, line 6. However, Berstis teaches “a test is run to determine whether the agent is able to obtain one of the limited number of connections” “If the outcome of the test is negative”, then a map is “regenerated to enable the agent ... to reschedule a new start time”, col. 5, 6, lines 47-58, 17-20 based on the information sent by the “central authority” and/or resending data, col. 9, lines 8-12 as taught in Guarneri . Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

19. Applicant’s arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference. For example, “these express limitations of claim 4 have not been addressed at all in the rejection”, Paper No. 4, Page 7, line 6.

20. Applicant suggests “the scheduling system in Berstis is directed to a client agent, and as noted hereinabove, does not operate in response to requests”, Paper No. 4, Page 7, lines 19-21. First, the client agent is making the requests to the server both of which resends data in various ways to accommodate eachs’ schedules. Arguably if Berstis’ teachings only operated at the client, the teachings of Guarneri would clearly show the scheduling or dividing of data could be done at the client or server or vice versa. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

21. Applicant suggests “the Applicant is unsure as to what time slot division means”, Paper No. 4, Page 8, lines 25-26. Claim 6 dictates “each time slot includes a first portion” interpreted to mean time slot division, thus we both could be clearer. However, Berstis teaches “a test is run to determine whether the agent is able to obtain one of the limited number of network connections according to some given criteria”, col. 5, lines 47-50, such as “a 5-10 minute period between broadcasts” as taught in Guarneri which inherently is why the data is broken into pieces to vary sending times as taught in Berstis. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.

22. Applicant suggests “the Examiner provides no rationale explaining why one of ordinary skill in the art would understand a table of weighted start times of a web agent to be a priority for servicing requests”, Paper No. 4, Page 9, lines 26-27. Based on the priority given to the start time, correlates to the priority given to the service request for that agent. Thus, Applicant’s arguments can not be held as persuasive regarding patentability.



***Conclusion***

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

24. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

27. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

sfw

December 9, 2002

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LE HIEN LUU  
PRIMARY EXAMINER